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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1113

KEVIN GEORGE SCOTT,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No._____

KEVIN GEORGE SCOTT,

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v.

STATE OF MARYLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

Petitioner, Kevin George Scott, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Special Appeals of Maryland filed on July 19, 1979 (per curiam). The Court of Appeals of Maryland denied, by Order filed October 19, 1979, Petitioner's timely-filed Petition for Writ of Certiorari to the Court of Special Appeals of Maryland.

Opinions Below

The unreported Opinion of the Court of Special Appeals of Maryland (per curiam) filed July 19, 1979, and the Order of the Court of Appeals of Maryland, filed October 19, 1979, denying the Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland, are annexed hereto as

Appendix A and Appendix B, respectively.

Jurisdiction

The judgment of the Court of Special Appeals of Maryland was dated and entered on July 19, 1979. By Order entered October 19, 1979, a timely Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland was denied by the Court of Appeals of Maryland. The Supreme Court to the United States' jurisdiction is invoked under 28 U.S.C. §1257.

Questions Presented

1. Whether it was error and a deprivation of Petitioner's right to due process of law and privilege against compelled self-incrimination to admit petitioner's confession into evidence contrary to the applicable decisions of the Court and of the State of Maryland.

2. Whether the trial court's failure to make specific fact findings upon the contentions of involuntariness of Petitioner's confession as a product of impermissible inducement and coercion mandates reversal in accord with the applicable decisions of the State of Maryland and of this Court.

Statutes, Constitutional Provisions, and Regulations Involved

United States Constitution, Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except

> in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Fourteenth Amendment:

> All persons born or naturalized in the United States, are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The Petitioner, Kevin George Scott, a minor, was indicted in Criminal Number 19609 on June 23, 1977, in the Circuit Court for Montgomery County, Maryland, on four counts including Murder, Armed Robbery, Statutory Daytime Housebreaking, and Use of a Handgun in the Commission of a Felony. Pleas of Not Guilty by Reason of Insanity were filed, together with a

Suggestion of Incomptency and a Motion to Remove to the Juvenile Court, and Not Guilty.

After appropriate hearings on the issues raised, the Court denied the petition to remove this case to the Juvenile Court, and overruled the Suggestion of Incompetency. A pretrial hearing was then conducted on June 6, 1978, on Petitioner's Motion to Suppress his Confession. The Court declined to exclude the statement and admitted the statement over objection in the State's case in chief. (R.917-918).

After a two-week trial, Petitioner was convicted by the Court of First Degree Murder, Robbery with a Deadly Weapon, Daytime Housebreaking, and Use of a Handgun in the Commission of a Felony, for which he was given cumulative sentences totalling life imprisonment plus ten years consecutive thereto. Petitioner filed a timely appeal to the Court of Special Appeals of Maryland on the issues raised at trial. The Court of Special Appeals of Maryland in Case Number 1357, September Term, 1978, by an Opinion filed July 19, 1979, affirmed the Petitioner's conviction (Appendix A). Petitioner's timely Petition for Writ of Certiorari to the Court of Special Appeals of Maryland was denied by the Court of Appeals of Maryland by Order filed October 19, 1979, September Term, 1979, Petition Docket Number 274 (Appendix B).

The crimes of which Petitioner was convicted arose out of the shooting of Rose Blanco on May 31, 1977. The State alleged that the Petitioner entered the home of Rose Blanco in Silver Spring, Maryland, and during the course of a housebreaking and a subsequent armed robbery of

Mrs. Blanco, shot her in the head with a small caliber handgun, fled the house with money from her purse, and escaped. (R.623-664) On June 14, 1977, the Montgomery County Police (Officer R. K. Stone) obtained a Maryland District Court warrant charging the Petitioner as an adult with armed robbery in a case unrelated to the case at bar. (McKenna robbery) At the time of his arrest on the unrelated case at about 6:00 A. M. on June 15, 1977 at the Petitioner's residence in Washington, D. C., all the principal police officers in the case knew that the Petitioner was a juvenile and was suspected in the instant case, but had no probable cause to arrest him. (R. 428-429; 495-499) The Montgomery County Police also intended at the time of the arrest to interrogate the Petitioner on the instant case, even though he was not being arrested for this case. (R.496)

The Petitioner had certain "rights" read to him by an Officer T. L. Bartholomew at his home, (T.386) and in the car by Officer Stone on the way to the District of Columbia Police Headquarters. By the officers' own admission, Petitioner had not responded to the rights being read. (R.387, 419, 454)

In the car during the ride to the District of Columbia Fugitive Squad, the officers engaged Petitioner in causual conversation designed to disarm him, (R.460) warm him up, (R.511) and to gain his confidence. (R.512) Upon arrival, Petitioner was interrogated by Montgomery County Officers before he was processed by District of Columbia Officers. (R.394) He was taken into an interrogation room by Montgomery County Officers William Crider and R. K. Stone, (R.461) told again

there was a fugitive warrant for him, (R.460) and that they wanted to talk to him about the unrelated McKenna case. (R.462) The Petitioner was again advised of his rights at about 6:50 A. M. on June 15, 1977, using a form known as MCP 50. He was provided with cigarettes and was handcuffed at all times. (R.431-432)

The police had every intention of talking to Petitioner about the instant case before they arrested him. (R.496) They also admitted that they had no evidence against the Petitioner except the statement they anticipated from him. (R.497-8) Likewise, the police had done what they could to gain his confidence and warm him up. (R.511-12) They also wanted to talk to him as soon as possible in hopes of getting a statement since they feared he would be less likely to talk to them if they waited. (R.515) The police also stated they believed they would not get a statement from Petitioner if he were to consult an attorney first. (R.516)

The police principally through Officer Stone, then began to interrogate the Petitioner. No tape recording or stenographic transcription of the proceedings were taken, and there exists no verbatim account of the events in the room. (R.497)

Before taking the statement from him, the police told Petitioner they already had the story and facts together through some use of vulgarity, and that all he had going for him was the truth, and the best thing for him to do was to "get it off his chest." (R.522-526)

At trial, Officer Stone testified, over objection by defense counsel, about the incriminating statement taken from the Petitioner at the D. C. Fugitive Squad after Petitioner denied involvement, (R.917) and was also permitted to testify, likewise over objection, to a statement written by Officer Stone and signed by Petitioner. (R.917-18) The statement was read into evidence (R.922-23) including a statement, over objection, as to allegations of an earlier crime, concerning the burglary of an unrelated house. (R.930)

Pertinent quotations of specific portions of the record relating to Petitioner's confession are annexed hereto as Appendix C.

Dr. Reginald Lourie, a psychiatrist, testified on behalf of Petitioner that Petitioner responded and confessed because he thought he would be allowed to go home. (R.220)

Pertinent quotations of Dr. Lourie's testimony relating to Petitioner's confession are annexed hereto as Appendix C.

The State's only expert witness, Dr. Adamo, agreed that the Petitioner was immature in his thinking, (R.278) that he possessed an IQ of dull normal, (T.279) and that the Petitioner had "poor judgment" "because he doesn't think about the consequences of the action." (T.280) Dr. Adamo also testified that Petitioner would incriminate himself, (R.282) and admitted that he was not aware of the statements made to Petitioner "that the best thing for you to do, Kevin, is to get it off your chest". (T.286-289) As to the effect of the officer's exhortations, the only expert testimony introduced by the State

was Dr. Adamo's conclusion: "As regards questions on this case I really can't say what kind of effect it could have had. All I can say is that he -- whatever provoked or produced or induced a psychosis if he wants to confess he confessed it and it seems to me that by the time it was a big question, he decided to say what he knew about it." (R.288)

Reasons for Granting the Writ

1. That the Court of Special Appeals' affirmance of the judgment below and the denial of the petition for writ of certiorari by the Court of Appeals of Maryland without discussion of the effects of specific exhortations and inducements on the voluntariness of the confession, raises important questions as to the Fifth and Fourteenth Amendment privilege against compelled self-incrimination and right to due process of law, not heretofore determined by this Court, and the decisions conflict with prior decisions of the State of Maryland concerning these questions.

The Court of Special Appeals of Maryland expressly relies on the fact that Petitioner "had already confessed to the [unrelated] McKenna robbery after having been thrice given his "Miranda warnings" and the absence of circumstances or statements "even more disadvantageous to the accused than those occurring here..." in affirming the judgment of the trial court that the confession was the voluntary act of the Petitioner. In so doing, the Court of Special Appeals raises important constitutional questions concerning the effect of certain specific exhortations

and inducements to confess under the Fifth and Fourteenth Amendments, and specifically the privilege against compelled self-incrimination, not previously considered by the Supreme Court, but resulting in obvious conflict with previous decisions in the State of Maryland. These questions should be settled by the Supreme Court and call for the exercise of the Supreme Court's power of supervision.

It is the long-established law in Maryland that the burden rests upon the State to show affirmatively that a confession offered in evidence in a criminal prosecution is the voluntary, free, and intelligent act of the accused and was not made in consequence of an improper inducement. Jackson v. State, 209 Md. 390, 121 A.2d 242 (1956); Greenwell v. State, 32 Md. App. 579, 363 A.2d 555 (1976). The State must show to the satisfaction of the Court that no force or coercion was exercised by the officers obtaining the confession to cause the accused to confess, and that no hope or promise was held out to the accused for the purpose of inducing him to confess. Smith v. State, 189 Md. 596, 56 A.2d 818 (1948). The record must be scrutinized with special care to determine whether a young defendant's confession is voluntary. Stokley v. State of Maryland, 301 F.Supp. 653 (D. Md. 1969).

A well-settled subordinate Maryland rule was concisely stated in Dobbs v. State, 148 Md. 34, 60, 129 A. 275, by Judge Offutt in which four judges joined in concurring with the per curiam opinion of the Court:

> Concerning the effect of an exhortation to tell the truth accompanied

> by an expression that it would be better to tell the truth, the authorities are divided, but the rule in this State, following the reasoning of the English courts, is that such an expression renders the confession inadmissible. Biscoe v. State, 67 Md. 6.

The following excerpt from Dobbs, supra, is of particular significance:

> Applying these principles to the facts of this case, in my opinion this confession should not have been admitted in evidence, for two reasons, first, because the State did not meet the burden which it assumed of the showing that it was voluntary, and, second, because the testimony negatives that conclusion...
>
> Nor can I escape the conclusion that when the State's attorney said to the prisoner, when he had been arrested for and accused of the murder, "Tell the truth about it. You've got nothing to fear if you tell the truth, and you weren't in it," he brought this case within the rule stated in the Biscoe case, supra. It is true he qualified the expression "You've got nothing to fear if you tell the truth" by adding "if you weren't in it." But what did that mean to the ignorant mental defective to whom he was speaking. While the particular question may have been related to the Littman robbery, he was being questioned about the murder. What did he understand was meant by being "in it"? He may well have thought that it meant that if he had taken no actual physical part in the robbery

> or murder, and told what the State's attorney would accept as the "truth" that he would "have nothing to fear." He may not have known of the rule that all persons participating in a felony are equally guilty of a homicide committed in its perpetration. Certainly, in the absence of any statement from the State's Attorney as to what had been said to the prisoner prior to that remark, it cannot be said that it may not naturally have led the prisoner to believe that if he "confessed" and had not actually robbed the store or shot its owner, he had nothing to fear, even if he had been present when the crime was committed.

Later, in Kier v. State, 213 Md. 556, 132 A.2d 494 (1957), the Court of Appeals of Maryland, quoting Edwards v. State, 194 Md. 387, 398, 71 A.2d 487, 492 (1950), stated:

> It is also settled law in this State that if the accused is told it would be better for him to tell the truth, such a statement constitutes such as inducement as to make the confession involuntary and inadmissible, citing Biscoe v. State, 67 Md. 6, 8 A.571; Watts v. State, 99 Md. 30, 57 A.542; and Lubinski v. State, 180 Md. 1, 22 A.2d 455.

In Edwards, supra, the Court traced the history and stated the rationale for the rule at 71 A.2d 491:

> The appellant contends that the statement made by Captain Kriss to the appellant urging him to tell the

> truth and this letter constituted in fact a statement to the appellant by the officer that it would be better for the appellant to tell the truth, and was such an inducement as to make the confess on involuntary on the part of the appellant and therefore inadmissible. It is evident that this letter made some impression on Edwards because although Captain Kriss did not at first testify that he showed this letter to Edwards, the appellant distinctly remembered it when he testified.
>
> It was said by this Court in the case of McCleary v. State, 122 Md. 395, at page 399, 89 A.1100, at page 1103, supra, "At the outset it is to be observed that the burden of showing that a confession of crime has not been obtained by improper means, that it is the voluntary act, uninduced by hope of favor or fear of harm, is one which the law casts upon the state. (Nicholson v. State, 38 Md. 140; Green v. State, 96 Md. 384, 54 A.104; Bram v. United States, 168 U.S. [532], 571, 18 Ct. 183, 42 L.Ed. 568; Watts v. State, 99 Md. 30, 57 A.542; Toomer v. State, 112 Md. [285] 292, 76 A.118); and, where this obligation is not satisfactorily met, it is improper to admit the confession.
>
> In the case of Biscoe v. State, 67 Md. 6, 8 A. 571, the prisoner, who was in custody of the law, although pressed often to make a confession persisted in denying his guilt. It was not until he was told by Morgan, the committing magistrate, "that it would be better for him to tell the truth, and have no more trouble about it," that the confession was made. In holding that confession inadmissible, Judge Robinson, speaking for this Court

reviewed the following English cases: Baldry's Case, 2 Den. C.C. 430; Reg. v. Garnier, 2 Carr. & K. 920; Rex v. Kingston, 4 C. & P. 387; Rex v. Partridge, 7 C. & P. 557. He says in that case, 67 Md. at pages 9 and 10, 8 A. at page 572: "The whole question was fully considered in the later case of [Reg. v.] Baldry, 2 Denison, Cr. Cas. 430, by Lord Campbell, C. J., Pollock, C. B., Parke, B., and Erle and Williams, J. J. Pollock, C. B., said: 'A simple caution to the accused to tell the truth, if he says anything.***the statement may be given in evidence; but, where, the admonition to speak the truth has been coupled with any expression importing that it would be better for him to do so, it has been held that the confession was not receivable, the objectionable words being that it would be better to speak the truth, because they import that it would be better for him to say something.'" (emphasis supplied)

The implication of involuntariness, improper inducement, and coercion is not derived solely from the language used by the interrogating officers in the instant case alone. A full review of the facts and circumstances surrounding and existing at the time of the statement by the Appellant raises this implication clearly.

Excerpts from both the supression hearing and the trial annexed hereto as Appendix C, point out the special meaning that the interrogating officers' language had to the Appellant.

There was absolutely no contradiction of the fact that these words of inducement were used. The fact of their use was

admitted by the State's witnesses. The uncontradicted testimony that the Appellant initially denied any involvement in the Blanco case clearly evidences the substantial impression which the officers' language had on the Appellant. The testimony of Dr. Lourie, annexed hereto in Appendix C, of which the Court made no specific determination, reveals quite clearly the even greater tangible inducement which the interrogating officers' language had for the Appellant.

The Appellant's specific charges of the inducement that "the best thing for you to do would be to get it off your chest" (T.522-23) and the words similar to "let's get it over with so we can get on out of here" (T.522-23) and that "all you have going for you is the truth" (T.526) were not even met by the trial Court.

Citing Biscoe v. State, supra, the Court in Hargis v. Warden, Maryland Penitentiary, 3 Md. App. 76, 237 A.2d 807 (1968), held as follows as to the specific contentions of involuntariness of a confession:

> While we agree with the basic standard used by the lower court, we do not feel that the lower court has sufficiently answered the allegations of involuntariness. Petitioner's specific charge of the inducement that "the confessions would not hurt him" but "would help himself in the eyes of the Judge" was not even met by the court. In addition, the dialogue which was taken from the transcript merely brings out conclusions as to voluntariness, it is not an adequate substitute for

a full review of the facts and circumstances existing at the time of the statement. It is evidence, however, of the voluntariness of the statement, and must be considered. Likewise, we think that the age of this defendant is an important factor and must also be considered....

The Supreme Court has looked to the "totality of the circumstances" when examining the confession, Fikes v. State of Alabama, 352 U. S. 191, 77 S.Ct. 281, 1 L.Ed.2d 246 (1957), Clewis v. Texas, supra, as has the Court of Appeals of Maryland in Cunningham v. State, 247 Md. 404, 231 A.2d 501, and this Court in Keller v. State, Md. App. 236 A.2d 313. We believe that the lower court should, in view of these cases, have made specific fact findings upon the contentions advanced." (Citations omitted, emphasis supplied)

The failure of the trial court to make a specific fact determination, in light of the exhortations of the interrogating officers and Dr. Lourie's testimony under the law of Kier, Hargis, and Dobbs, supra, clearly mandates reversal. The inducement in the instant case was not a mere exhortation "that it would be better to tell the truth" which in Dobbs, and cases following, was held sufficient to render the confession inadmissible, but included substantial implication both by the use of the words themselves and the internal psychological impact which the language had on the Appellant. The Appellant's mere affirmative response to a MCP Form 50 inquiry concerning whether he understood his rights is not an adequate substitute for a full review of the "totality of the circumstances" existing at the time of the statement. Hargis, supra.

An important question is thus raised whether inducements and exhortations such as "tell the truth" coupled with such language as "it would be better to tell the truth" under the totality of the circumstances as presented herein, are sufficient to render the Petitioner's confession inadmissible under the Fifth and Fourteenth Amendments' privilege against compulsory self-incrimination. These questions have not been, but should be, settled by the Supreme Court. The Court of Special Appeals' decision and the Court of Appeals of Maryland's silence on the question justifies the grant of certiorari to review the judgment below.

2. The failure of the trial court to make specific fact findings concerning Petitioner's contentions of improper inducement, coercion, and exhortations, coupled with the defense psychiatric testimony on the effect of such improper inducement and the absence of contradictory testimony, mandates reversal under well-established Maryland law and the applicable law of this Court.

For the reasons set forth in Reason 1 above, the Court of Special Appeals and the trial court erred in failing to "look to the totality of the circumstances" and make specific fact findings upon the contentions raised by the Petitioner as to the involuntariness of the confession. Such error calls for an exercise of the Supreme Court's power of supervision and justifies the grant of certiorari to review the judgment below.

Conclusion

For these reasons, a writ of certiorari to the Court of Appeals of Maryland should issue to review the judgment and opinions of the highest courts of Maryland.

Respectfully submitted,

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January 17, 1980

APPENDIX A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1357
September Term, 1978

KEVIN GEORGE SCOTT

v.

STATE OF MARYLAND

Liss
Wilner
Blackwell, Albert T., Jr.
(Specially Assigned),

JJ.

Per Curiam

Filed: July 19, 1979

APPENDIX A

After a two-week trial, appellant was convicted in the Circuit Court for Montgomery County of first degree murder, robbery with a deadly weapon, daytime housebreaking, and use of a handgun in the commission of a felony, for which he was given sentences that, in the aggregate, total life imprisonment plus 10 years. He appeals, alleging a broad spectrum of reversible error. His complaints, which we shall consider in somewhat different order than presented in his brief, concern (1) his competence to stand trial, (2) the refusal of the court to remand him to the Juvenile Court, (3) the admissibility of his confession, (4) sufficiency of corroborating evidence, other than the confession, (5) admissibility of hearsay conclusions as to his criminal responsibility, and (6) whether in general he received a fair trial.

As each of these issues has its own factual setting, we shall, preliminarily, set forth only a cursory background and then discuss the relevant facts in more detail as we consider the respective issues.

The crimes of which appellant was convicted arose out of the shooting of Rose Blanco on May 31, 1977. Someone broke into the Blanco home that morning, shot Mrs. Blanco, and took money from her purse. Ten days later, someone broke into the home of Louise McKenna, also in Montgomery County, shot Mrs. McKenna, and stole some property from her home. Appellant was arrested in the District of Columbia at about 6:00 A.M. on June 15, 1977, in connection with the McKenna incident. He was not then charged with any of the crimes emanating from the Blanco episode, although the county police suspected that he might have been responsible for them

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as well. In large part as the result of confessions that he ultimately gave to the county police, appellant was indicted in both cases, although they were severed for trial.

Appellant, who was under 18 when these crimes were committed, first attempted to have the Circuit Court waive its "criminal" jurisdiction and remand the proceedings in both cases to the juvenile court pursuant to Md. Annot. Code art. 27 § 594A. When that failed, he filed pleas of insanity and contested his competence to stand trial. He also moved to suppress his confessions. Pretrial hearings were conducted on the waiver, competence, and suppression motions.

(1) Competence to Stand Trial

An accused is incompetent to stand trial if he is unable to understand the nature of the object of the proceeding against him or to assist in his defense. Md. Annot. Code art. 59, § 23; Raithel v. State, 280 Md. 291, 297 (1977). Although an accused is initially presumed to be competent, once he places his competence in issue, it must be determined by the court, from evidence in the record, beyond a reasonable doubt. Colbert v. State, 18 Md. App. 632, 641 (1973), cert. den. 269 Md. 756; Raithel, supra; Jolley v. State, 282 Md. 353 (1978).

After a two-day evidentiary hearing, the court found, beyond a reasonable doubt, that appellant "has understood and appreciated the nature of the offense...the nature and objectives of the proceedings...[and] the consequences of his act...." It found also that, despite some problem in the

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ability of counsel and appellant to communicate, because of counsel's access to the prosecutor's file, "there has been no inability to reconstruct the facts and the circumstances that surround this case in order to accommodate the needs of defense."

In this appeal, appellant does not suggest that these findings are insufficient as a matter of law to establish his competence--i.e., that they do not suffice to satisfy the test of competence -- and we shall therefore not consider that question. Rather, his complaint is, or appears to be, that these findings are not supported by the evidence. We disagree.

The evidence of appellant's incompetence came from Dr. Reginald Lourie, a psychiatrist, and from defense counsel. Both described their contacts with appellant and stated their belief that he was not able to communicate effectively with his attorney or to understand the seriousness of his situation. Lourie felt that, while "intellectually", appellant understood the nature and object of the proceedings against him, he did not understand the "consequences". The thrust of defense counsel's concern was an inability to discuss with his client the "minute details" of what had occurred, although it was clear that appellant was aware of what he was charged with and how and why the crimes were committed. He knew where and when the Blanco episode took place, and told his attorney that he entered the Blanco and McKenna homes for the purpose of robbing the occupants. Both defense witnesses testified to a "drifting" by appellant -- an inability to concentrate on what was being discussed -- although Lourie said that he was able to bring appellant out of his drifting.

APPENDIX A

The State's evidence consisted of the testimony and written reports of Donald Fishman, a psychician trained in both psychiatry and neurology, and Ido Adamo, a psychiatrist employed at the Clifton T. Perkins Hospital Center. Fishman examined appellant in March, 1978. He did not observe any "drifting", but found appellant to be direct and cooperative. He was able to answer questions, and was aware of things than an average person of his age and experience would know. Fishman found no evidence of psychosis. Adamo did the psychiatric work-up on appellant at Perkins, and found him clearly competent, under the relevant test, to stand trial. He found no problem in communicating with appellant, who was able to discuss the offense, relate his background, and give a clear idea of the way he was thinking and feeling. Adamo said that appellant knew what crimes he was charged with, understood the consequences of those charges, and was reconciled to spending his life in prison. His responses, Adamo said, were detailed.

It is apparent that what the court had was a conflict in the evidence, not an insufficiency of it. It obviously gave the greater credence to that in support of appellant's competence, as it had a right to do. We cannot say that the court was clearly erroneous in its finding of competence.

(2) Remand to Juvenile Court

Appellant argues that the court abused its discretion in denying his petition to remand the case to the Juvenile Court "because there was ample testimony in the record with which to support a remand, and

the Court's ruling did not conform to the evidence presented." He conveniently overlooks the overwhelming evidence mandating against such a remand.

The court held two hearings with respect to waiver, one being primarily testimonial, the second consisting of a series of stipulated proffers. On March 1, 1978, in a written Memorandum and Order, the court, with great care, reviewed each of the five statutory criteria for waiver set forth in art. 27, § 594A(b) in the light of the evidence presented, and concluded that it should retain its criminal jurisdiction. The subsequent stipulations did not alter that conclusion.

We have reviewed all of the evidence presented to the court, and find it more than ample to support the court's findings and determination. Appellant was nearly 18 when the crimes were committed and was over 18 at the time of the waiver hearings. Physically, he was in good health, although the evidence as to his mental health was in conflict. With respect to amenability to treatment in juvenile institutions or programs, the evidence clearly indicated that there was no such institutions or programs that could meet appellant's needs, and that what he needed could only be supplied (if at all) in the adult system. Marie Simmons, a juvenile services counsellor who had dealt with appellant in connection with a prior breaking and stealing episode, stated "flat-out" that the juvenile system "really has no facilities for him." If waived, he would end up at the Maryland Training School, but it was stipulated that "it would be difficult for him to come and be helped by their program." If referred

to a State hospital, he would be sent to Springfield Hospital Center, where, because of security considerations, he would be placed in an adult, rather than an adolescent, ward. There was no dispute that appellant needed a secure facility, that the offenses with which he was charged were serious ones, and that appellant was a danger to the public safety. Even Dr. Lourie, appellant's chief witness, in the end could suggest no more than that appellant be "studied" in a juvenile facility in order to determine whether he should be treated as a juvenile or an adult.

Upon this record, the court's determination to retain criminal jurisdiction could hardly be called--legitimately called--an abuse of discretion. It was fully supported by the evidence ans was entirely appropriate.

(3) Admissibility of the Confession

Appellant's challenge to the admissibility of his confession is a multi-faceted one. He asserts (i) that the State failed to prove the confession was voluntary, (ii) that it also failed to establish that appellant understood and freely, knowingly, voluntarily, and intelligently waived his "Miranda" rights, (iii) that the "taint of an illegal arrest" was not sufficiently removed to make the confession admissible, and (v) that the requirements of Maryland District Rule 723 were not complied with, making the statement inadmissible under Johnson v. State, 282 Md. 314 (1978).

After a lengthy evidentiary hearing, the circuit court made specific findings of fact, upon a preponderance of the evidence, that

appellant's confession was voluntary and that his waiver of the "Miranda" rights was free, voluntary, and knowingly and effictively given. It found also that the statement was not extracted by threat, violence, promises, hope of favor, or fear. From our independent review of the evidence, it is clear to us that these findings were entirely justified. We further agree with the circuit court that there was no "taint" to be removed, because appellant's arrest was not unlawful, and also taht the exclusionary rule announced in Johnson is not applicable in this case.

The relevant factual setting with respect to these issues is as follows. Detective Richard Stone, of the Montgomery County Police Department, testified that appellant's name came to his attention in connection with the McKenna case on June 13, 1977. He believed that the same person involved in the McKenna incident was also involved in the Blanco killing, although he admittedly did not have probable cause to proceed against appellant for that latter offense. On June 14, 1977, Stone obtained an arrest warrant for appellant in connection with the McKenna case. It was issued by the District Court in Montgomery County[1], and charged appellant with armed robbery.

As appellant lived in the District of Columbia, Stone and Deteceive Crider took the warrant to the Fugitive Squad of the

[1]Appellant does not challenge the validity of that arrest warrant, and did not do so in the circuit court. We may therefore assume that it was properly issued upon a showing of probable cause.

D. C. Metropolitan Police at about 6:00 P. M. on the evening of the 14th. Based upon that warrant, Detective Franklin (Metropolitan police) prepared an affidavit for a search warrant; this, in turn, was presented to a judge in the District, who issued a search warrant at about 8:00 P.M.

Stone and Crider returned to the District early the next morning, and accompanied several D.C. officers to appellant's home at about 6:00 A.M. to serve and execute the warrant. Although no one seemed to know whether a "fugitive warrant" had been issuee by the District of Columbia judge, appellant and his parents were told that appellant was being arrested as a fugitive based upon a Maryland warrant charging armed robbery.

With but minor and inconsequential discrepancies, three of the officers that effected the arrest stated that appellant was arrested in his bedroom, where he had been asleep, that he was advised that he was under arrest for armed robbery, that he got dressed, was handcuffed, and led to a waiting police cruiser. Appellant's parents were told where he was being taken and why.

As appellant was put in the care, D.C. Officer Bartholomew read to appellant his "Miranda" warnings. No questioning occurred before then. Detectives Stone and Crider accompanied appellant to the D.C. police station, Stone repeating the "Miranda" warnings as they drove. Appellant said that he understood his rights. According to Stone, appellant appeared to understand the "Miranda" questions, seemed to be coherent, and responded in an intelligent manner.

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The officers did not discuss the crimes while traveling to the station, and appellant made no comments about them. The conversation was about neutral, routine matters. Stone candidly admitted that his purpose in engaging in such "small talk" was to get to know appellant, to establish some rapport with him.

When they arrived at the police station at about 6:45 A.M., Stone asked if he could talk with appellant. Officer Bartholomew said that appellant followed Stone and Crider into an interrogation room. Stone told appellant (paraphrasing), "you know why we're here", we didn't pick you out of a clear blue sky, all you have going for you is the truth, the best thing to do is to tell the truth. He then read the "Miranda" warnings once again--this being the third time in less than an hour--and appellant signed a form acknowledging that these warnings had been given.

Stone then questioned appellant about the McKenna incident--"talked our way through it"--and obtained an oral confession. He then had appellant repeat the store while he wrote it down. Appellant then read the written statement aloud, made and initialed a number of corrections, and signed each page. Once finished with the McKenna case, Stone turned to the Blanco killing, and appellant initially denied any involvement with it. Stone then said, in effect, "you're lying and wasting our time", "the best thing for you to do is to get it off your chest". Stone's admitted purpose in saying these things was to encourage appellant to talk. His purpose was achieved, as appellant then orally admitted that he had broken into the Blanco home, shot Mrs.

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Blanco in the head, and took money from her purse. He shot her "so there would be no evidence." The procedure used with respect to the earlier (McKenna) confession was then repeated--appellant went through the story a second time while Stone wrote it down, appellant then read the written statement aloud, made and initialed corrections, and signed each page.

The questioning ended about 8:40 A.M.; it had lasted slightly less than two hours. Appellant was allowed to smoke during the interrogation, and Stone expressly denied that any promises, threats, or inducements were made or given. When it was over, appellant declined an invitation to make a telephone call. He was taken then to the cell block in the police station where he remained until about 10:30 or 11:00 A.M., when he was moved to the cell block at the D.C. Superior Court.

Officer Bartholomew stated (without contradiction) that there are no full-time magistrates in the District. An arraignment court is held at 1:00 P.M., and that is the first opportunity for an accused to appear before a judicial officer. Even if he had not been held at the police station for interrogation, appellant would not have been presented before a judicial officer any sooner than 1:00 P.M. As it turned out, because his court-appointed counsel was tied up, appellant did not actually appear in court until about 4:30 P.M. The principal purpose of the hearing, in appellant's case, was to determine whether he wished to waive extradition, which, against the advice of counsel, he elected to do.

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Following this hearing, Stone and Crider transported appellant to the police station in Silver Spring. Once again, his "Miranda" rights were read, and appellant said that he understood them. This time, he asked for a lawyer, and no further questioning ensued. He was taken before a District Court commissioner at 7:20 P.M.

Appellant's attack on voluntariness and the effectiveness of the "Miranda" warnings was again based primarily upon the testimony of Dr. Lourie. He opined that such warnings would have no meaning to appellant--that appellant would have thought that if he acknowledged the accusation and "got it off his chest", he would be allowed to go home. Contradicting this theory, however, was the testimony of Dr. Adamo that nothing disclosed in his examination of appellant would indicate an inability to understand and waive these rights. Nor did Adamo believe appellant actually thought he could go home if he confessed. With respect to the "get it off your chest" comment, Dr. Adamo said that there was nothing in appellant's personality "which could have made it so easy to induce him into providing such a confession....He's not a suggestible type of individual. He's not the kind of individual who follows whatever is being followed."

The issues raised with respect to voluntariness and the "Miranda" warnings involved questions of both fact and law. With respect to whether appellant actually understood the rights and warnings that were thrice read to him and was able mentally and intellectually to make an intelligent choice as to giving a statement or remaining silent, the court was not

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obliged to accept the hypothesis put forth by Dr. Lourie. There was more than ample evidence to support its findings that appellant did truly understand his rights and that his decision to confess was a knowing and intelligent one. See Greenwell v. State, 32 Md. App. 579 (1976); King v. State, 36 Md. App. 124 (1977); Hackett v. State, 235 Md. 585 (1964). That does not end the controversy, however, for the question is then raised of whether Detective Stone's suggestions that the best thing for appellant to do was to tell the truth and "get it off his chest" amount to an impermissible threat or inducement, vitiating the confession on that basis.

In this reagrd, we must be careful not to become so spellbound by the asserted significance of particular words or phrases that we lose sight of the real issue--whether the confession was truly the free and voluntary act of appellant. Appellant relies upon Biscoe v. State, 67 Md. 6 (1887) and some of its later progeny--Dobbs v. State, 148 Md. 34 (1925), Edwards v. State, 194 Md. 387 (1950), Kier v. State, 213 Md. 556 (1957)--for the proposition that any exhortation to tell the truth--that it would be better to tell the truth--suffices to render a subsequent confession involuntary and therefore inadmissible. We do not believe that the Court of Appeals has gone quite that far. As the Court pointed out in Kier, 213 Md. at 562, these cases, and others of the same type, involved more than merely the single suggestion that it would be better to tell the truth. It was the coupling of that exhortation with other statements or circumstances disclosed by the evidence that led the Court, in those instances, to conclude that the accused's free will had indeed been overcome. Absent

such other factors, the mere comment that it would be better to tell the truth has not been deemed to be inherently coercive, and has not sufficed to render a confession invalid. See Kier at 562; Ralph v. State, 226 Md. 480 (1961), cert. den. 369 U.S. 813; Merchant v. State, 217 Md. 61 (1958). See also Bean v. State, 234 Md. 432 (1964), holding, in circumstances even more disadvantageous to the accused than those occurring here, that the comment, "come on, confess, to get it off my chest" was not an improper inducement.[2]

Given the full circumstances disclosed by the evidence here, particularly in light of the fact that appellant had already confessed to the McKenna robbery after having been thrice given his "Miranda" warnings, we do not believe that the trial court erred in declining to find that these two comments by Detective Stone served in any way to overcome appellant's free will and thereby to render his statements with respect to the Blanco killing involuntary.

The remaining two questions dealing with the admissibility of the confession may be answered rather quickly. Appellant's contention that the confession was "tainted" by an illegal arrest falls because there was nothing illegal about the arrest. Whether or not the Metropolitan Police had a "fugitive" warrant, based upon the Maryland warrant (which sufficed at least to cause

[2] All of these cases are of "pre-Miranda" vintage, and their ultimate conclusions as to admissiblity must be considered in that light. They are cited only with respect to the issue of voluntariness, and do, we think, remain valid for that purpose.

the issuance of a search warrant by the D.C. Superior Court), they certainly had probable cause to believe that appellant had committed a felony; and that would authorize his arrest even without a D.C. arrest warrant. See Berigan v. State, 2 Md. App. 666 (1968).

Appellant's final ground of attack--non-compliance with Maryland District Rule 723--is thwarted by what we said in Davis v. State, ___ Md. App. ___ (Sept. Term, 1978, No. 650, Opinion filed June 5, 1979), Slip Opinion, p. 15:

> "M.D.R. 723 a obviously has no extra-territorial effect as a matter of law. Its provisions do not purport to tell law enforcement officers outside the State what to do--whether the officers be employed by Maryland or some other state. When a Maryland officer obtains custody of a person outside of Maryland his duties with respect to that person are, while he is still without Maryland's boundaries, not governed at all by M.D.R. 723 a because, as we said, the rule has no extraterritorial effect. Whatever duty the custodial officer may have to return his prisoner to Maryland for prompt presentment to a Maryland judicial officer derives not from M.D.R. 723 a but from the common law or from constitutional considerations of due process, or from the implications of the Uniform Criminal Extradition Act (Md. Ann. Code, 1957, 1978 repl. vol., Art. 41, § 16-43). None of these sources provide a per se exclusionary sanction for their violation such as the Court of Appeals has imposed for the violation of M.D.R. 723 a."

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Appellant, of course, was arrested in Washington, D.C., and was subject to the procedures applicable in that jurisdiction. It is significant that appellant was taken before a judicial officer there at the earliest possible time, and that no delay in such presentment was occasioned by his interrogation at the police station. Neither was there any inordinate delay in taking him before a District Court commissioner upon his return to Maryland.

(4) Sufficiency of Corroborating Evidence

Appellant claims here, with respect to all four crimes of which he was convicted, that proof of both his criminal agency and the corpus delicti rested solely upon his uncorroborated confession, and that, by virtue of Courts article, § 3-830(a), as it existed at the time of trial, his conviction cannot stand.

It is clear, of course, that an uncorroborated confession will not suffice to establish the corpus delicti--that crimes were committed. See Bradbury v. State, 233 Md. 421 (1964). Section 3-830(a) is not needed as authority for that proposition that corroboration is needed to establish criminal agency as well, a requirement that has not, to date, been established judicially.

The simple answer to his argument, both as to the corpus delicti and criminal agency, is that the factual predicate upon which it rests is absolutely false. Proof of these essential elements did not rest solely upon his confession. Indeed, nearly every significant statement made in his confession was corroborated by independent evidence; and that corroborating evidence, coupled

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with the confession, clearly sufficed to establish both the commission of the crimes and appellant's criminal agency. For example:

(1) Appellant said that he shot the woman in the back of the head, a fact corroborated by the medical examiner's autopsy report and photographs of the victim that were admitted into evidence;

(2) He said that she was washing the living room window at the time, a fact corroborated by physical evidence found at the scene (the position of her body, the bottle of window cleaner on the sill, and a bullet hole in the window);

(3) He admitted shooting her with a .32 caliber revolver, a fact corroborated by evidence that a spent .32 caliber bullet was recovered outside in front of the victim's home;

(4) He said that he left the victim "laying over the back of the couch", a fact corroborated by the testimony of her husband, who found her in that position when he returned home;

(5) He admitted taking money from a red wallet located in a purse that he found in the kitchen. This too was corroborated by the husband's testimony. After discovering his wife's lifeless body--later that afternoon--he noticed her purse on the kitchen countertop, her wallet in it but empty. Mr. Blanco also said that his wife had money in her purse before she was shot.

We conclude, without doubt or hesitation, that appellant's confession was more than adequately corroborated, and that, together, the evidence sufficed to establish both the crime and appellant's guilt. It is therefore, not necessary to consider whether, by some strained theory, the second sentence of

§3-830(a), since repealed by the General Assembly (Laws of Md., 1978, ch. 814) is applicable to proceedings in the criminal court.

(5) Hearsay Conclusions as to Criminal Responsibility (Sanity)

Relying here upon Gregory v. State, 40 Md. App. 297 (1978), appellant argues that the court erred in permitting Drs. Silver and Adamo to recite the opinions of other psychiatrists present at the staff conference conducted at Clifton T. Perkins Hospital Center.

In Gregory, we held that, under the circumstances of that case and where a clear objection had been made to it, evidence offered by the State of out-of-court opinions as to a defendant's criminal responsibility was inadmissible where the authors of those opinions were not in court, were not subject to cross-examination, and where no valid reason for their absence was advanced. The exclusion was founded upon the constitutional right of confrontation, and not upon the hearsay rule. Indeed, to the extent that the opinions in question were recorded as part of Perkins' hospital records, kept in the ordinary course of business, the hearsay rule would not bar their admission. Courts article, § 10-101; Gregory, 40 Md. App. at 305; Dunn v. State, 226 Md. 463 (1961).

The circumstances in this case are quite different than those in Gregory.

Dr. Adamo testified at the pre-trial hearing with respect to appellant's competence to stand trial. He was not asked, at that

time, about appellant's criminal responsibility, but was questioned only as to appellant's competence. Several times, and in several different ways, the State attempted to elicit from Adamo whether the staff opinions as to appellant's competence were unanimous; but each time, in the face of appellant's objection, the court declined to allow such evidence, notwithstanding that that very information (as to both competence and responsibility) had been included in a letter sent by the Superintendent of Perkins[3] to the court less than three weeks earlier. The court did allow Dr. Adamo's report--actually his "Psychiatric Case Work Up", which was part of the Perkins case file on appellant--to be admitted. This report expressed Adamo's opinion as to competence and responsibility, but not that of anyone else. At that point, defense counsel indicated his intention to place the entire Perkins file in evidence, and did subsequently cause it to be admitted as a defense exhibit. The file contained, among many other things, a report of the medical staff conference of May 15, 1978, recording that all four psychiatrists present agreed that appellant was competent and responsible.[4]

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[3]Md. Annot. Code art. 59,§23, provides that, when an accused is referred for examination as to competence, as appellant was, "a full and complete report of findings shall be forwarded to the court having jurisdiction over the defendant." This report generally (and in this case specifically) mentions whether the opinion of the medical staff was unanimous. We fail to see what purpose the report would serve if the court is unable to consider it.

[4]It also contained a copy of the Superintendent's May 17 letter to the court, to which counsel had earlier objected.

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This time, the State objected; and, when questioned, defense counsel stated that his desire was to find out what Adamo based his opinion (as to competence) on--not to support the opinion of another person. Whatever the limited nature of counsel's desire, the complete file was admitted as a defense exhibit without qualification or limitation.[5]

At trial, appellant placed his criminal responsibility in issue through the testimony of Dr. Lourie. Lourie testified that at the time of the offense appellant suffered from a mental disorder which he diagnosed as paranoid schizophrenia. He stated further that "on that particular day", appellant's mental disorder was of such substantial capacity that he would be unable to conform his conduct to the requirements of law. On cross-examination, Lourie conceded that appellant was able to appreciate the criminality of his conduct when he entered the Blanco home, when he took his gun with him, and when he loaded the gun. According to Lourie, it was only when he was suddenly faced by Mrs. Blanco that "voices told him she wished him dead", and it was at that moment that

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[5]Appellant asserts that the admission of the hospital file was qualified. We disagree. The State, in effect, withdrew its objection, stating "[w]e rely on the opinion in the file and I think it was admissible in the State's direct and if Mr. Longest now wants to do a reverse on his interpretation of evidence, fine, it can come in." The court then responded,"All right. We'll let it come in. Then it will be Defendant's Exhibit No.1, the entire report." (Emphasis supplied.) There is no indication here that any part of the file was excluded(as it could have been), or that the purpose and effect of its admission was limited in any way.

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he lost his ability to conform his conduct to the requirements of law.

In rebuttal, the State produced Dr. Stuart Silver, the Clinical Director at Perkins and one of the participants at the May 15 staff conference. Silver was asked what transpired at that conference, to which appellant objected on the grounds that the question called for too broad an answer. No ruling was made on the objection, but, at the court's suggestion, the State asked more specific questions. Silver apparently referred to his notes in answering these questions, which produced another objection. At this point, a discussion took place as to whether the Perkins file was in evidence. Defense counsel did not object to its admission, but expressed his desire that it not be a defense exhibit which, at the suppression hearing, it had been. He suggested that "the appropriate thing to do would be to remark it as a State's exhibit in this trial...." The court resolved the problem, without objection from anyone, by marking and admitting the file as a court exhibit. Once again, the entire file was admitted, including the record of the staff conference, without qualification or limitation.

Dr. Silver expressed his own opinion that appellant was criminally responsible, and gave the basis of that opinion. Among other things, he said that he considered the opinions expressed by the other physicians at the staff conference in forming his own opinion. He then was asked whether the opinions of the other physicians at the staff conference were stated on the issue of responsibility, to which counsel somewhat prematurely objected on grounds of hearsay.

The State said that it desired to elicit this information, and then discover what the other opinions were, for the purpose of showing how Silver arrived at his own opinion. After some hesitation, the court permitted Silver to recite the opinions given at the conference because they were already in evidence through the hospital file. It was clear that the court considered Silver's testimony in this regard as merely cumulative. "All right," it said "Go ahead. If they're in the file you may go ahead." Counsel objected "for the record."

We have set all of this out in such great detail because the right of an accused to confront his accusers is a fundamental one, and a waiver of it will not lightly be presumed. Nor will a violation of it lightly be held to constitute "harmless error". But it is abundantly clear in this case that not only was a proper objection to the evidence now in dispute never made and preserved but that the opinions of the other staff psychiatrists recorded in the hospital file had no bearing whatever on the court's verdict.

By failing to object to the hospital file, appellant may not complain about precisely the same evidence coming in through Dr. Silver. See Peisner v. State, 236 Md. 137 (1964), cert. den. 379 U.S. 1001. Moreover, to the extent that any objection was made, it was clearly premised upon the hearsay rule, and not upon the right of confrontation. But the hospital file was not inadmissible because of hearsay, and, once it was admitted, Silver's testimony, even if hearsay, was merely cumulative. Any objection to it upon hearsay grounds

would have been waived. Even more telling, however, is that the opinions of these out-of-court doctors played no part in the court's determination of the insanity defense' and this, perhaps, is what most distinguishes Gregory.

Gregory was tried before a jury, which had before it the testimony of four psychiatrists asserting that the accused was insane, that of two psychiatrists claiming that he was sane, and a hospital record showing that three more psychiatrists also believed that he was sane. It was impossible, we noted (40 Md. App. at 304) for this Court to know what, if any, weight the jury may have given to the opinions of the three absent psychiatrists; and we therefore had to presume that, as with other evidence, it weighed in the jury's ultimate determination. Here, the court made clear the basis upon which it arrived at its judgment. It simply did not accept the theory put forth by Dr. Lourie--"the episodic insanity", it said, "could not be as Dr. Lourie testified." The court's rejection of Lourie's hypothesis and opinion left it with no credible evidence at all in support of the insanity defense, but even absent the hospital record, with Dr. Silver's own opinion as to appellant's responsibility. The court never once mentioned the extra-judicial opinions complained of here; and it is clear to us, beyond a reasonable doubt, that they played no part in its finding of sanity. Even if error, therefore, the admission of that part of the hospital file was harmless beyond a reasonable doubt.

(6) Due Process -- Fair Trial

Appellant's final point is that, through a collection of evidentiary offers

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by the State, and some unfavorable rulings by the court, he was denied a fair trial, and therefore was deprived of his liberty without due process of law. He does not assert that any of these offers or rulings, standing alone, would constitute reversible error, but complains only of their cumulative effect.

We have examined the episodes complained of, and conclude that appellant's complaint is entirely without merit. In two of the four instances mentioned, the court sustained appellant's objection and excluded the evidence, and we shall not presume that the court ignored its own ruling and considered the "evidence" anyway. Hebb v. State, 31 Md. App. 493 (1976). The other instances, if error, which we do not suggest, were certainly not so prejudicial as to negate a fair trial. It is clear to us from the record that the court was exceedingly impartial and very fair in guarding appellant's rights.

JUDGMENTS AFFIRMED;
APPELLANT TO PAY THE COSTS.

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KEVIN GEORGE SCOTT	)	In the
	)	
v.	)	Court of Appeals
	)	
STATE OF MARYLAND	)	of Maryland
	)	
	)	Petition Docket No. 274
	)	
	)	September Term, 1979
	)	
	)	(No. 1357, September
	)	Term, 1978, Court of
	)	Special Appeals)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: October 19, 1979.

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Q: Did you tell him at that point in time something to the effect that, now, Kevin, you know why we're here. We've got our shit together. Do you recall telling him that?
A: Yes, sir, I do. (T.522)
Q: Did you tell him that you didn't pick him out of a blue sky?
A: Yes, sir.
Q: Did you tell him that you knew that all he had going for him was the truth?
A: Yes, sir.
Q: Did you tell him that the best thing for him to do would be to get it off his chest?
A: Yes, sir.
Q: Did you tell him also that, now, let's don't fool around with this crap, let's get it over with so we can get on out of here?
A: No, sir.
Q: Did you use any words at all to that effect?
A: Not at that time, no, sir.
Q: But those words were used that morning, were they not, or similar words?
A: Later on in the morning, yes, sir. Not--those words per se but something similar to them.
Q: Well, what were the words that were similar to them that were used later on in the morning?
A: You're lying. Don't waste our time and your time. Let's get it over with.
Q: Did you say--did you add anything to that let's get it over with so we can get out of here?
A: No, sir, I did not. (T.522-23)
Q: After you advised him of why you were there, that you didn't pick him out of a blue sky, that the best thing to do is to get if off your chest, did you then execute the

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MPC 50 form on him?
A: I advised him the best thing to do is to tell the truth but before we talk to you we have to advise you of your rights, and then I executed the MPC Form 50. (T.524)
Q: When did you tell him the best thing to do is to get it off your chest, before or after you executed the form?
A: It was before we took the statement regarding the McKenna case and just prior to getting into the Blanco case.
Q: So before any statement concerning the murder you told him that the best thing for him to do is to get it off his chest?
A: Yes, sir.
Q: When did you tell him that--I want to make sure I understand this, when did you in fact tell him that now we've got our shit together and we didn't pick you out of a clear blue sky. We want to talk to you about such-and-such.
A: That would have been prior to the MPC Form 50 being executed. (T.525)
Q: And you did say to him before you executed the form that you knew that all he, meaning Kevin Scott, had going for him was the truth, is that right?
A: Yes, sir. I do. (T. 526)
Q: When you started into the Blanco case is that when the, the get it off your chest language was used?
A: Yes, sir.
Q: Is it fair to say that when you made the statement to him that the best thing for him to do was to get it off your chest, that the purpose of making that statement was to encourage him to talk to you about the Blanco case?
MS. RAKER: Objection.
THE COURT: Overruled. You may answer.
THE WITNESS: Yes, sir.
BY MR. LONGEST: Q: Is it also not--is it

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fair to say also that you anticipated that if you did not make that statement he wouldn't talk to you about the Blanco case because he had just denied responsibility for it?
A: Yes, sir.
Q: Once again I appreciate your candor. (T.528-529)
Q: Did you tell him that morning that that morning after you talked to him he was going to be locked up and held?
A: After we completed interviewing Kevin I tried to explain to him the procedure as to what was going to happen.
Q: But you didn't explain that to him before you talked to him, did you?
A: No, sir.
Q: Well, did he have any hesitancy in talking to you at all about it?
A: At first he denied being involved in the Blanco case.
Q: It's at that point in time that you made certain comments to him about getting it off his chest, isn't that correct?
A: I believe so, yes, sir.
Q: Did you use any profanity at that point in time in your conversation with Kevin?
A: No, sir, I did not.
Q: Had you used any profanity before that time?
A: Yes, sir. (T. 949)
Q: Is it true that you indicated to Kevin at some time before the statement concerning Mrs. Blanco was taken that you weren't there to waste your time?
A: That's correct.
Q: Isn't it true that you implied to Kevin that you wanted to know right then and there what happened?
A: Yes, sir. (T.951)

TESTIMONY OF DR. REGINALD LOURIE:
BY MR. LONGEST: Q: Doctor, do you have an

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opinion to render with a reasonable degree of medical certainty as to whether or not Kevin Scott would have the intellectual and/or psychological ability to understand what is meant by the statement you have the right to remain silent?
A: I do.
Q: What is that opinion?
A: That on the basis of his life history his expectation in the presence of an accusation is to acknowledge it as his whether it's his or not and then would be expecting that it would have no consequences for him.
Q: In fact, did you interview Kevin Scott in reaching this particular opinion concerning those consequences or his expectations about those consequences?
A: Yes, and it goes back to the question or the statements I made yesterday about his concepts, his distortion of the reality that he faces in any situation which produces anxiety or stress.
Q: Would being questioned by the police after being arrested create anxiety or stress in Kevin?
A: Yes, it would and he resorted then to a lifelong pattern in which he felt that if he acknowledged what was being asked of him he would then be allowed to go free.
Q: Do you have any evidence of that pattern of thinking in this particular instance when he gave a statement to the police?
A: Well, what he told me about it is that I thought when I told them what they asked me is that they would let me go home. I think to understand this phenomenon we have to look at how the mind works and there is one important basic principle which is that first experiences particularly if they're repeated, become imprinted as a way of

functioning. We don't know why that is and that is in process of being studied because it is so important and because it goes back to experiences in the earliest period of an individual's life, but particularly if it's repeated afterwards it becomes an automatic response to similar situations.
Q: Well, is that person, is Kevin able to, when told something to the contrary, that he has a right to remain silent, that anything that he says may be used as evidence against him, is he capable mentally of understanding what that means and having an appreciation for it?
A: He wouldn't have an appreciation of it. Now, this is not something that I am alone in--
MS. RAKER: I object and move to strike.
THE COURT: Just tell us what you think.
MR. LONGEST: Let me ask him another question.
THE COURT: Yes. (T. 203-205)
THE WITNESS: On the basis of what is in a sense a prejudicial script for the way in which Kevin would respond, my interpretation is that he would respond to it in terms of his picture of what the reality is. If I get it off my chest I will be allowed to go home. (T. 209)
Q: If Kevin Scott responded the way you say he did, that he confessed because he thought he would be allowed to go home--
A: Yes. (T. 220)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No._____

KEVIN GEORGE SCOTT,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

CERTIFICATE OF SERVICE

I, Beverly S. Pearson, attorney for Kevin George Scott, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on January 17, 1980, I served three (3) copies of the attached Petition for a Writ of Certiorari on Respondent, State of Maryland, by mailing in a duly addressed envelope, first class, postage prepaid, to the Office of the Attorney General of the State of Maryland, One South Calvert Street, Baltimore, Maryland, 21202. All parties required to be served herein have been served.

Beverly S. Pearson

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